SUPREME COURT OF INDIA

Girjesh Shrivastava

Vs.

State of M.P.

C.A.No.9227 of 2010

(G.S. Singhvi and Asok Kumar Ganguly JJ.)

22.10.2010

JUDGMENT

A.K.Ganguly, J.

1. Leave is granted in all these Special Leave Petitions.

2. These appeals arise from the decision delivered on 06.08.2004 by the High Court of Madhya Pradesh in Review Petitions 1071/2003, 1074/2003, and decision of the High Court of Madhya Pradesh in WP(C) 63/2002 and WP (C) 1529/2001 dated 03.11.2003. The Review Petitions were filed by those teachers who, though not impleaded in the writ petitions, were affected by High Court's decision dated 3.11.2003.

3. Appellants are a group of Grade II and III school teachers working in Panchayat Schools as Samvida Shala Shikshak (contractual teachers). They had been appointed under the provisions of the Madhya Pradesh Panchayat Contractual Teachers (Conditions of Appointment and Service) Rules, 2001 (hereinafter "2001 Rules"). These selection rules which had come into force on 11.07.2001 were made in exercise of the powers conferred under sub- section (1) of Section 95 read with sub- section (2) of Section 70 of the Madhya Pradesh Panchayati Raj Avam Gram Swaraj Adhiniyam 1993 (Act 1 of 1994).

4. Pursuant to the provisions of the said rules, an advertisement was issued by the Zila Panchayat Office, District Bhind, to initiate selection process for the appointments. All the appellants had applied and were selected and consequently appointed as Samvida Shala Shikshak.

5. These appointments however were challenged in two Public Interest Litigations being WP(C) 1529/2001 and WP(C) 63/2002, inter alia, on the ground that in contravention of the 2001 Rules, no proper advertisement for reservation for ex-servicemen had been made. It was further challenged as being held in contravention of para 5 (viii) of the order passed by the State Government vide memo dated 11.7.2001, as members of the selection committee

had their near relatives appear as candidates for selection. While WP (C) 1529/2001 challenged the appointments made by Janpad Panchayat Mehagaon, WP (C) 63/2002 challenged the appointments made by Janpad Panchayat Raun. Both the panchayats are within the district of Bhind, Madhya Pradesh.

> "Rule 5 (4) (b) of 2001 Rules provides: "For each category of the vacant posts, the reservation shall be –
>
> (i) xxx
>
> (ii) xxx
>
> (iii) 10% for ex-army personnel;
>
> (iv) Reservation shall also be provided to any other category which is notified by the Government from time to time."

6. Para 5 (viii) of the memo dated 11.07.2001 provides:

> "(5) Some provisions of the Contractual Teachers (Appointment and Service Conditions) Rules 2001 are to be specifically kept in mind, which are as follows:-
>
> (i) xxx
>
> (ii)xxx
>
> (iii)xxx
>
> (iv)xxx
>
> (v)xxx
>
> (vi)xxx
>
> (vii)xxx
>
> (viii) Prior to the constitution of the interview board it will be ensured that the son/daughter or real relatives of the Members of the Board are not participating in the interview. It will be appropriate that an undertaking may be taken from the Members in this behalf."

7. Before the High Court the petitions were heard mainly on the points mentioned above.

8. With respect to WP No. 1529/2001 the High Court allowed the writ petition and ordered the cancellation of appointments, inter alia, on the grounds that appointments were illegal as members of the selection committee allowed their near relatives to appear in the selection process. It stated that on the basis of an inquiry conducted by the District Collector, show-cause notices were issued to three members of the selection committee asking them as to why did their relatives appeared as candidates in the selection.

9. The High Court further held that in contravention of Rule 5 (4) (b) which mandated 10 per cent reservation for ex- servicemen, no proper advertisement had been made so as to invite applications from ex-servicemen. The High Court noted that the Respondent-State of Madhya Pradesh had accepted this mistake on its part. On the question as to whether those who had already been appointed and were being affected by the said order of quashing the appointments, were to be impleaded or not, the Court held that in an earlier order dated 07.11.2001, it had stated that the issuance of the appointment letters in the concerned matter was subject to the outcome in the writ petition. Therefore the question of impleadment of those who were appointed did not arise anew.

10. However, in WP No. 63/2002, even though the High Court allowed the petition in view of contravention of provision for 10 per cent reservation, it held in the writ petition, near relatives of the members of the selection committee did not appear for selection. Hence, as against the decision in WP (C) 1529/2001, the Court in WP (c) 63/2002 did not strike down the selection on the basis of the presence of near relatives. Instead it invalidated the selection only for being in violation of Rule 5 (4) (b) which mandated a reservation of 10 per cent for ex-servicemen.

11. Aggrieved by the decision of the High Court some of the successful candidates, who are appellants herein, and were not impleaded in either of the two writ petitions, filed Review Petitions No. 1071/2003, 1074/2003 and 1117/2003 before the High Court. They pleaded that the selection process was quashed in WP 1529/2001 and WP 63/2002, to their great prejudice without impleading them to the proceedings. They further argued whether the alleged improper recruitment of a handful of candidates had flawed the entire selection is a matter to be considered by the High Court. They also argued that in a service matter where express remedy is available, a Public Interest Litigation is not maintainable.

12. The High Court in its order dated 06.08.2004 dismissed all the review petitions. While upholding the impugned orders it said that having regard to the grave irregularity in the selection process, the quashing of the entire selection process was just and proper.

13. In these appeals it is contended that WP(C) 1529/2001 and WP (C) 63/2002 cannot be called Public Interest petitions as there was an element of Personal Interest involved. This is clear from the fact that these PILs had been filed with respect to only two janpads, whereas the advertisement inviting applications for selection, and the consequent selection process had been made in six janpads. Also, the challenge to the advertisement was made as late as three months after the date of its issuance.

14. However, the main argument by the appellants against entertaining WP (C) 1520/2001 and WP (C) 63/2002 is on the ground that a PIL in a service matter is not maintainable. This Court is of the opinion that there is considerable merit in that contention.

15. It is common ground that dispute in this case is over selection and appointment which is a service matter.

16. In the case of *Dr. Duryodhan Sahu and others vs. Jitendra Kumar Mishra and others*[1], a three judge Bench of this Court held a PIL is not maintainable in service matters. This Court, speaking through Srinivasan, J. explained the purpose of administrative tribunals created under Article 323-A in the backdrop of extraordinary jurisdiction of the High Courts under Articles 226 and 227. This Court held "if public interest litigations at the instance of strangers are allowed to be entertained by the (Administrative) Tribunal, the very object of speedy disposal of service matters would get defeated" (para 18). Same reasoning applies here as a Public Interest Litigation has been filed when the entire dispute relates to selection and appointment.

17. In *B. Srinivasa Reddy v. Karnataka Urban Water Supply & Drainage Board Employees' Association and others*[2], this Court held that in service matters only the non-appointees can assail the legality of the appointment procedure (See para 61, page 755 of the report).

18. This view was very strongly expressed by this Court in *Dattaraj Nathuji Thaware v. State of Maharashtra and others*[3], by pointing out that despite the decision in Duryodhan Sahu (supra), PILs in service matters `continue unabated'. This Court opined that High Courts should `throw out' such petitions in view of the decision in Duryodhan Sahu (supra) (Para 16, page 596).

19. Same principles have been reiterated in *Ashok Kumar Pandey v. State of W.B.*[4].

20. In a recent decision of this Court delivered on 30.8.2010, in *Hari Bansh Lal v. Sahodar Prasad Mahto and others*[5], it has been held that except in a case for a writ of `Quo Warranto', PIL in a service matter is not maintainable (See paras 6 and 7).

21. The next point urged by the appellants, that they had never been impleaded in the two petitions, even as orders passed by the High Court had a direct effect on their livelihood, also goes to the root of the matter as it violates the principle of audi alteram partem.

22. This Court in *Prabodh Verma and others vs. State of Uttar Pradesh and others*[6], held, "A High Court ought not to decide a writ petition under Article 226 of the Constitution without the persons who would be vitally affected by its judgment being before it as respondents...". Similarly this Court in *Ramarao and others vs. All India Backward Class Bank Employees Welfare Association and others*[7], said, "...An order issued against a person without

impleading him as a party and thus, without giving an opportunity of hearing must be held to be bad in law. The appellants herein, keeping in view the fact that by reason of the impugned direction, the orders of promotion effected in their favour had been directed to be withdrawn, indisputably were necessary parties. In their absence, therefore, the writ petition could not have been effectively adjudicated upon." Also in *B. Ramanjini and others v. State of Andhra Pradesh and others*[8], where selection of certain teachers was challenged without impleading them, this Court held, "Selection process had commenced long back as early as in 1998 and it had been completed. The persons selected were appointed pursuant to the selections made and had been performing their duties. However, the selected candidates had not been impleaded as parties to the proceedings either in their individual capacity or in any representative capacity. In that view of the matter, the High Court ought not to have examined any of the questions raised before it in the proceedings initiated before it. The writ petitions filed by the respondents concerned ought to have been dismissed which are more or less in the nature of a public interest litigation."

23. The High Court while dismissing the review petitions stated that in view of the grave irregularity of allowing near relations to appear in the selection process, the entire selection had been rightly set aside. This finding is a rather sweeping one as factually it appears that in W.P. (C) No.63/2002 none of the members of the selection committee allowed their near relatives to appear as candidates. It is, therefore, important to note that the selection process had been struck down on the ground of presence of near relatives in WP (C) No.1529/2001 alone and not in WP (C) No.63/2002. Furthermore even in WP (C) No.1529/2001 an order dated 10/12/2001 (i.e. prior to the dismissal of the review petition) was made by the District Collector after conducting an inquiry that out of the three alleged cases of relatives of the selectors being selected, two were not `relatives' as defined under Section 40 of the Madhya Pradesh Panchayati Raj Act, 1993. One Jai Pal Singh who was found to be a `relative' of Layak Singh Gurjar, a member of the District Panchayat, within the meaning of Section 40 of the Act was interviewed, but was never selected. This has been certified by the Chief Executive Officer of the District Panchayat.

24. From these facts it can be concluded that the alleged participation of near relatives in the selection process was not such a factor as to vitiate the entire selection process. Even if there were some illegal beneficiaries from the selection process, they should have been weeded out instead of striking down the entire selection process. In *Charanjit Singh and others vs. Harinder Sharma and others*[9] a similar situation had arisen. In that case, while not approving the interference of the High Court in the selection process, this Court held that merely because some of the candidates in the selection process happened to be relatives of the members of the selection committee, it did not mean that all the candidates were relatives of the members of the selection committee and had been illegally selected. It was also held that since the petition was not made by any of the candidates who had appeared in the selection process and was instead filed as a Public Interest Litigation, it was improper for the High Court to interfere in the matter.

25. On a more detailed analysis of this issue, in *Union of India and others v. Rajesh P. U., Puthuvalnikathu and another*[10], this Court held that "In the light of the above and in the absence of any specific or categorical finding supported by any concrete and relevant material that widespread infirmities of an all pervasive nature, which could be really said to have undermined the very process itself in its entirety or as a whole and it was impossible to weed out the beneficiaries of one or other of irregularities, or illegalities, if any, there was hardly any justification in law to deny appointment to the other selected candidates whose selections were not found to be, in any manner, vitiated for any one or other reasons. Applying an unilaterally rigid and arbitrary standard to cancel the entirety of the selections despite the firm and positive information that except 31 of such selected candidates, no infirmity could be found with reference to others, is nothing but total disregard of relevancies and allowing to be carried away by irrelevancies, giving a complete go bye to contextual considerations throwing to winds the principle of proportionality in going farther than what was strictly and reasonably required to meet the situation. In short, the Competent Authority completely misdirected itself in taking such an extreme and unreasonable decision of cancelling the entire selections, wholly unwarranted and unnecessary even on the factual situation found too, and totally in excess of the nature and gravity of what was at stake, thereby virtually rendering such decision to be irrational".

26. Coming to the issue of selection and appointment of ex-servicemen as a reserved category, from what has been placed before us, we understand that while in Mehagaon 5 ex-servicemen had been appointed out of a total of 9 applicants, in Raun none had been so appointed. As stated above, if at all there was an issue with respect to the reservation policy of the ex-servicemen it ought to have been brought up as a service dispute and not in a PIL. The High Court, with due respect, should have displayed a little more restraint and balance before quashing a selection process in which the persons selected had already put in 3 years of service.

27. Furthermore it should be noted that para 10 of the application form for the candidates stated that if the applicant person was either a handicap or an ex-serviceman then he was required to mention so in the application form and that a certificate to the same effect from a competent authority should be enclosed. As noted earlier in WP (C) No.1529/2001 as many as 9 ex-servicemen had applied, out of which 5 had been selected and appointed in the reserved category. The rest 4 were not selected in the selection process. Therefore, it would be incorrect to say that the advertisement was so made so as to prevent ex-servicemen from applying.

28. More importantly, in deciding these issues, the High Court should have been mindful of the fact that an order for cancellation of appointment would render most of the appellants unemployed. Most of them were earlier teaching in Non-formal education centers, from where they had resigned to apply in response to the advertisement. They had left their previous employment in view of the fact that for their three year long teaching experiences, the interview process in the present selection was awarding them grace marks of 25 per cent. It had also given them a relaxation of 8 years with respect to their age. Now, if they lose their

jobs as a result of High Court's order, they would be effectively unemployed as they cannot even revert to their earlier jobs in the Non-formal education centers, which have been abolished since then. This would severely affect the economic security of many families. Most of them are between the age group of 35-45 years, and the prospects for them of finding another job are rather dim. Some of them were in fact awaiting their salary rise at the time of quashing of their appointment by the High Court.

29. With utmost respect to the High Court, we are constrained to observe that equities were not properly balanced in the exercise of discretion by the High Court.

30. For the reasons aforesaid, the appeals are allowed. The impugned judgments of the High Court are quashed. The selection proceedings are upheld.

31. Parties are left to bear their own costs.

[1]*(1998) 7 SCC 273*
[2]*(2006) 11 SCC 731 (II)*
[3]*(2005) 1 SCC 590*
[4]*(2004) 3 SCC 349*
[5]*MANU/SC/9654/2010*
[6]*(1984) 4 SCC 251*
[7]*(2004) 2 SCC 76*
[8]*(2002) 5 SCC 533*
[9]*(2002) 9 SCC 732*
[10]*(2003) 7 SCC 285*